

## **BULLETIN 02-03**

**TO: ALL PROPERTY & CASUALTY INSURERS WRITING  
COMMERCIAL LINES INSURANCE PRODUCTS AND  
ALL INSURERS ON THE NAIC QUARTERLY  
LISTING OF ALIEN INSURERS**

**FROM: J. ROBERT WOOLEY, ACTING COMMISSIONER OF INSURANCE**

**RE: TERRORISM RISK INSURANCE ACT OF 2002  
EXPEDITED VOLUNTARY FILING PROCEDURES**

### **Introduction**

The purpose of this bulletin is to advise you of certain provisions of the *Terrorism Risk Insurance Act of 2002* (the Act), which has been signed by the President and took effect on November 27, 2002, that may require insurers to submit a filing in this state and to inform you about a voluntary procedure that insurers may use to expedite the filing and review of disclosure notices, policy form language and rates.<sup>1</sup>

The Act provides a federal backstop for defined acts of terrorism and imposes certain obligations on insurers. The Act creates within the Department of the Treasury the Terrorism Insurance Program (the Program) and vests the Secretary with the authority to implement and enforce the provisions of the Act.

All insurers subject to the Act are required to participate in the Program and make available property and casualty insurance coverage for *insured losses* that do not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism.<sup>2</sup>

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<sup>1</sup> This Bulletin contains copyrighted material from the NAIC Model Bulletin adopted November 26, 2002.

<sup>2</sup> Section 102(6) of the Act defines “insurers” for purposes of the Act. “Insurer” means any entity and affiliate thereof--(A) that is--(i) licensed or admitted to engage in the business of providing primary or excess insurance in any State; (ii) an eligible surplus line carrier listed on the Quarterly Listing of Alien Insurers of the NAIC, or any successor thereto; (iii) approved for the purpose of offering property and casualty insurance by a Federal agency in connection with maritime, energy, or aviation activity; (iv) a State residual market insurance entity or State workers’ compensation fund; (B) that receives direct earned premium for any type of commercial property and casualty insurance coverage.

## **“Act of Terrorism” and “Insured Loss”**

Section 102(1) limits the term *act of terrorism* to those acts **certified** as such by the Secretary of the Treasury acting in conjunction with the Secretary of State and the Attorney General. The definition establishes criteria to be followed by the Secretary in determining whether to certify an act as an *act of terrorism*. Section 102(1)(B) states, “No act shall be certified by the Secretary as an act of terrorism if—(i) the act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers’ compensation; or (ii) property and casualty insurance losses resulting from the act, in the aggregate, do not exceed \$5,000,000.”

Section 102(5) of the Act provides a definition of *insured loss*. It states: “the term ‘insured loss’ means any loss resulting from an *act of terrorism* (including an act of war, in the case of workers’ compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if such loss—(A) occurs within the United States; or (B) occurs to an air carrier (as defined in section 40102 of title 49, United States Code), to a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs, or at the premises of any United States mission.

As a result of the definitions contained in the Act, two distinct types of loss are created. For ease of reference they will be referred to as (1) “certified loss” and (2) “non-certified loss”. The term “certified loss” as used herein refers to losses resulting from *certified* acts of terrorism. Only a “certified loss” is an *insured loss* that falls within and is covered by the provisions of the Act. For the purposes of this Bulletin the terms *insured loss* and *certified loss* are synonymous and may be used interchangeably.

A *non-certified loss* results from what would otherwise be an act of terrorism except that it is not certified as such by the Secretary. Losses resulting from a non-certified act of terrorism fall outside of the Act’s definition of *insured loss*; therefore, the terms and conditions for coverage and/or exclusion of such losses are not governed by the Act.

## **Voidance and Reinstatement of Terrorism Exclusions for *Insured Losses***

Any terrorism exclusions in a contract for property and casualty insurance that is in force on the date of enactment of the Act is void to the extent that it excludes losses that would otherwise be

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Section 102(12) of the Act states that the term “property and casualty insurance” (A) means commercial lines of property and casualty insurance, including excess insurance, workers’ compensation insurance, and surety insurance, and (B) does not include crop or livestock insurance, private mortgage or title insurance, financial guaranty insurance issued by monoline financial guaranty insurance corporations, medical malpractice, health or life insurance including group life, flood insurance provided under the National Flood Insurance Act, or reinsurance or retrocessional reinsurance.

*insured losses*. The Act also voids state approval granted to any terrorism exclusion in a contract for property or casualty insurance that is in force on the date of enactment of this Act to the extent that it excludes losses that would otherwise be *insured losses*.

However, the terrorism exclusion may be reinstated under the following circumstances, only:

(1) the insurer obtains from the insured a written statement that affirmatively authorizes the insurer to reinstate the exclusion; or

(2) the insurer gives the insured not less than thirty (30) days notice of the additional premium for the terrorism coverage which notice includes full disclosure of the insured's rights and of the fact that the exclusion will be reinstated if the premium is not paid, and the insured fails to pay the premium.

If an insurer intends to reinstate an exclusion on in-force policies as allowed under the Act, it may only reinstate the exclusion that previously existed on the policy.

This state will not allow exclusions of coverage for acts of terrorism that fail to be *certified losses* solely because they fall below the \$5,000,000 threshold in Section 102(1)(B) on any policy that provides coverage for *certified losses*. Insurers required to file policy forms may submit language containing coverage limitations for *certified losses* that exceed \$100 billion.

Please note that the preemption of this state's filing law, LSA-R.S. 22:620, applies only to contract language that is applicable to *certified losses*.

### **Terrorism Exclusions for Non-Certified Losses**

Louisiana has allowed, and will continue to allow, some significant limitations that provide coverage for acts of terrorism under certain circumstances. For policies providing property insurance coverage the following limitations apply to *non-certified losses*:

- Exclusion for acts of terrorism only apply if the acts of terrorism result in industry-wide insured losses that exceed \$25,000,000 for related incidents that occur within a 72 hour period;
- Exclusions for acts of terrorism are not subject to the limitations above if:
  - The act involves the use, release or escape of nuclear materials, or that directly or indirectly results in nuclear reaction or radiation or radioactive contamination;
  - The act is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
  - Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

For policies providing liability insurance coverage the following limitations apply to *non-certified losses*:

- Exclusion for acts of terrorism only apply if the acts of terrorism result in industry-wide insured losses that exceed \$25,000,000 for related incidents that occur within a 72 hour period; or
- Fifty or more persons sustain death or serious physical injury for related incidents that occur within a 72-hour period. For purposes of this provision serious physical injury means:
  - Physical injury that involves a substantial risk of death;
  - Protracted and obvious physical disfigurement; or
  - Protracted loss of or impairment of the function of a bodily member or organ.
- Exclusions for acts of terrorism are not subject to the limitations above if:
  - The act involves the use, release or escape of nuclear materials, or that directly or indirectly results in nuclear reaction or radiation or radioactive contamination;
  - The act is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
  - Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

Policies subject to policy form filing requirements should also define what constitutes an act of terrorism for *non-certified losses*. For *non-certified losses*, this state would accept the following definition, or one that is more liberal to policyholders:

The phrase “non-certified act of terrorism” means a violent act or an act that is dangerous to human life, property or infrastructure that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion, and the act is not certified as a terrorist act pursuant to the Federal Terrorism Risk Insurance Act of 2002.

### **Submission of Rates, Policy Form Language and Disclosure Notices**

Insurers are required to comply with the Act and with state law. Section 106(a)(2)(B) of the Act states that “during the period beginning on the date of enactment of this Act and ending on December 31, 2003, rates and forms for terrorism risk insurance coverage covered by this title and filed with any State shall not be subject to prior approval or a waiting period under any law of a State that would otherwise be applicable...”. The subsection further notes that rates remain subject to subsequent regulatory review based on whether a rate is “excessive, inadequate, or unfairly discriminatory” and other applicable state law. Similarly, policy forms are subject to subsequent review based on all applicable laws and regulations. Thus, a system is created where insurers can immediately implement prospective rate changes for coverage of *insured losses* related to *acts of terrorism* as defined in the Act. Policy language for terrorism risk and insurance covered by the Act (granting coverage or excluding coverage for *insured losses*) is only exempt from prior approval or waiting periods to the extent that the policy language relates to *insured losses* as defined in the Act. Other policy language changes and related pricing remain subject to current applicable state law and will be processed in an expedited manner.

If an insurer relies on an advisory organization to file loss costs and related rating systems on its behalf, no rate filing is required unless an insurer plans to use a different loss cost multiplier than is currently on file for coverage for *certified losses*. The rate filing should provide sufficient information for the reviewer to determine what price would be charged to a business seeking to cover *certified losses*. This state will accept filings that contain a specified percentage of premium to provide for coverage for *certified losses*. Insurers may also choose to use rating plans that take into account other factors such as geography, building profile, proximity to target risks and other reasonable rating factors. The insurer should state in the filing the basis that it has for selection of the rates and rating systems that it chooses to apply. The supporting documentation should be sufficient for the reviewer to determine if the rates are excessive, inadequate or unfairly discriminatory. For the convenience of insurers, this state will waive its requirements for supporting documentation for rates for certified losses for filings that apply an increased premium charge of between 0% and 2% and do not vary by application of other rating factors.

Insurers subject to policy form regulation must submit the policy language that they intend to use in this state within a reasonable time after they are implemented. This state considers 30 days to be a reasonable time for purposes of completing an expedited filing of policy language. The policy should define *acts of terrorism* for both *certified* and *non-certified losses* in ways that are consistent with the Act, state law and the information provided in this bulletin. The definitions, terms and conditions should be complete and accurately describe the coverage that will be provided in the policy.

The Commissioner requests that the disclosure notices be filed for informational purposes, along with the policy forms, rates and rating systems as they are an integral part of the process for notification of policyholders in this state and should be clear and not misleading to business owners in this state. The disclosures should comply with the requirements of the Act and should be consistent with the policy language and rates filed by the insurer. Details about the applicable requirements are contained in the following two paragraphs.

In-force business receives special consideration under the Act. Section 105(a) voids any terrorism exclusion on existing policies to the extent that it excludes losses that would otherwise be *insured losses* as defined in the Act. It details a process for insurers and policyholders to reinstate the voided exclusions. Under that process, an insurer may reinstate a preexisting provision in a contract that is in force on the date of enactment of this Act and that excludes coverage for an act of terrorism only if the insurer has received a written statement from the insured that affirmatively authorizes such reinstatement or if the insured fails to pay any increased premium charged by the insurer for providing such coverage and the insurer provided notice, at least 30 days before any such reinstatement as provided in Section 105 of the Act.

There are also disclosures required for new business and renewal business. Although avoidance of contract language is not an issue, insurers must make certain disclosures to policyholders to remain in compliance with the Act. Section 103(b)(2) requires insurers to provide a clear and conspicuous disclosure to the policyholder of the premium charged for covered *insured losses*

and advise that a federal program exists where the federal government will share significant portions of major *insured losses* with insurers.

### **Effect on Workers' Compensation Insurance Coverage**

Treatment of workers' compensation is slightly different than for other property and casualty insurance coverages. First, Section 102(1)(B)(i) provides that the federal program will share the risk of loss for workers' compensation for acts of war in addition to acts of terrorism. This treatment occurs because of the statutory nature of the workers' compensation program, which does not provide an exclusion for losses resulting from an act of war. Under Louisiana law there is no exclusion for workers' compensation losses resulting from an act of war. There is no provision in the Act that would preempt the compulsory coverage aspects of workers' compensation insurance policies. In other respects, however, workers' compensation coverage is treated under the Act as any other covered line of insurance. Therefore, the notice requirements of Section 103(b)(2) and the mandatory "make available" requirements of Section 103(c) apply to workers' compensation policies. In this connection, workers' compensation insurers are required by the Act to separately state (the amount of) the estimated portion of the premium being charged a policyholder for acts of terrorism, as defined in the Act. As this state's workers' compensation law does not have any exclusions for terrorism or war, neither insurers nor policyholders may use the Act's procedures to create such an exclusion. With regard to the filing and approval of rates and forms, workers' compensation insurers are also covered by the Act, specifically Section 106(a)(2)(B) that waives any state prior approval or time requirements for the first year of the Act. Such insurers should therefore follow the alternative filing procedures described in this bulletin.

### **Standard Fire Policy States**

In Louisiana, the requirements for fire coverage are established by law, and where applicable, policies that provide fire coverage must meet or exceed the provisions of the Standard Fire Policy. These legal requirements cannot be waived. Thus, a business cannot voluntarily waive this statutorily mandated coverage.

### **Information for SERFF Filers**

For insurers that use the SERFF system, there will be an expedited filing form in that system for your use.

### **Explanation and Instructions for Terrorism Rate and Form Review**

The Act preempts any state prior approval law pertaining to rates or forms—including any law that imposes waiting periods—prior to use of a rate or form for purposes of terrorism coverage, as defined by the Act. This preemption remains in effect for the first year of the Act. Consistent with these requirements of the Act, this bulletin establishes a system for insurers or advisory organizations to file their rates and forms no later than 30 days after their first date of use. The

procedure for obtaining an expedited review of such rates and forms is set forth below. However, nothing in this bulletin shall be construed as establishing a rate or form filing review or approval requirement where one does not otherwise exist under this state's law. Policy language changes and related pricing for *non-certified losses* remain subject to current applicable state law and will be processed in an expedited manner.

### **Forms with Instructions**

Attached to this bulletin is a uniform filing transmittal form that has been agreed upon by this state and other states. An insurer or advisory organization wishing to receive expedited treatment of its filing shall complete the EXPEDITED FILING TRANSMITTAL DOCUMENT—FOR TERRORISM RISK INSURANCE FORMS AND PRICING as directed. In addition, the insurer(s) or advisory organization submitting the filing must certify that the filing is consistent with this bulletin, state law and the provisions of the Act. Certification is made by signing the appropriate blank on the transmittal form. Filings for policy language changes and related pricing for *non-certified losses*, which remain subject to current applicable state law, may be made using the attached filing transmittal form. These filings will be processed in an expedited manner. The attached expedited filing transmittal document replaces all otherwise applicable filing forms and filing transmittal forms for these filings.

To be complete, an expedited filing must include the following:

1. A completed, certified Expedited Filing Transmittal Document for each insurer or advisory organization.
2. One copy of each policy form or endorsement that the insurer intends to use, unless the insurer has given an advisory organization authorization to file them on its behalf.
3. A copy of the rates and rating systems along with the supporting documentation, if required.
4. A copy of any disclosure notices that will be used to convey information to policyholders in this state.
5. The appropriate filing fees.
6. A postage-paid, self-addressed envelope **large enough to accommodate the return.** Note that a comparable filing transmittal form is available in SERFF.

If this filing is for multiple companies, please provide a copy of the transmittal header for each company and an extra copy for return to the company. (i.e. 7 companies = 8 copies)

Additional information regarding the Act may be found at [www.treasury.gov/trip](http://www.treasury.gov/trip).

Questions regarding this Bulletin may be directed to:

Policy forms: Kathlee Hennigan at [khennigan@ldi.state.la.us](mailto:khennigan@ldi.state.la.us) or by telephone at 225-342-0073;  
Rates: Malissa Drake at [mdrake@ldi.state.la.us](mailto:mdrake@ldi.state.la.us) or by telephone at 225-342-9055; or to

**Effective/Expiration Date**

This bulletin shall take immediate effect as of December 31, 2002. The expedited filing process outlined herein shall expire on December 31, 2003. The remainder of the bulletin shall expire on December 31, 2005, unless Congress extends the duration of the Act.

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**J. ROBERT WOOLEY**  
**ACTING COMMISSIOER OF INSURANCE**



**EXPEDITED FILING TRANSMITTAL DOCUMENT  
FOR TERRORISM RISK INSURANCE FORMS AND PRICING**

**This page applies to the following state(s)**

Indicate Type of Filing
<input type="checkbox"/> Filing Related to <i>Certified Losses</i>
<input type="checkbox"/> Filing Related to <i>Non-Certified Losses</i>
<input type="checkbox"/> Filing Applicable to Both Certified and Non-Certified Losses

Department Use only

Company Name(s)	Domicile	NAIC #	FEIN #

**Contact Info for Filer**

Name and address of Filer(s)	Telephone #	FAX #	e-mail

**Filing information**

<b>Line of Insurance</b> (see attachment)	
<b>Company Program Title</b> (Marketing title) (if applicable)	
<b>Filing Type</b> ** see note below	
<b>This application is used with:</b>	
<b>Effective Date Requested</b>	
<b>Filing date</b>	
<b>Company Tracking Number</b>	
<b>Date filing approved in domiciliary state, if applicable</b>	

	<u>Component/Form Name</u> <u>/Description/Synopsis</u>	<b>Form # or Rate Page</b> Include edition date	<b>Replacement</b> Or withdrawn?	<b>If replacement,</b> give form # or rate page(s) it replaces	<b>Previous State</b> Filing Number, if required by state
01			<input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn <input type="checkbox"/> Neither		
02			<input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn <input type="checkbox"/> Neither		

To be complete, a filing must include the following:

- A completed Expedited Filing Transmittal Document for each insurer or advisory organization.
- One copy of each endorsement, disclosure form or other policy language, unless the insurer has given an advisory organization authorization to file them on its behalf.
- A copy of the rates, rating systems and supporting documentation.
- The appropriate filing fees, if required
- A postage-paid, self-addressed envelope **large enough to accommodate the return.**

The insurer(s) submitting this filing certifies that it:

- ☐ Is in compliance with the terms of the Terrorism Risk Insurance Act of 2002 and the laws of this state; and
- ☐ Is in compliance with the requirements of the bulletin containing the voluntary expedited filing procedures.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name:

\_\_\_\_\_  
Title:

## COMPLETED SAMPLE FORM

Ed. 11/15/02

EXPEDITED FILING TRANSMITTAL DOCUMENT  
FOR TERRORISM RISK INSURANCE FORMS AND PRICING

This page applies to the following state(s) \_\_\_\_\_

Indicate Type of Filing
<input type="checkbox"/> Filing Related to <i>Certified Losses</i>
<input type="checkbox"/> Filing Related to <i>Non-Certified Losses</i>
<input type="checkbox"/> Filing Applicable to Both Certified and Non-Certified Losses

Department Use only

Company Name(s)	Domicile	NAIC #	FEIN #
ABC Insurance Company	NY	0000-99999	99-1234567

## Contact Info for Filer

Name and address of Filer(s)	Telephone #	FAX #	e-mail
John Doe (Form Filing) Regulatory Compliance ABC Insurance Co. 12345 Fifth Ave New York, NY 10234	501-555-5555	501-555-5551	John.doe@abcins.com

## Filing information

Line of Insurance (see attachment)	Commercial General Liability
Company Program Title (Marketing title) (if applicable)	General Liability Program
Filing Type ** see note below	Form (Endorsement)
This application is used with:	(Insert policy form number to which the application attaches)
Effective Date Requested	01-01-02 (Enter your desired effective date)
Filing date	(Date Company sends filing)
Company Tracking Number	ABC-EP-2001-01 (Enter your filing tracking number, if applicable)
Date filing approved in domiciliary state, if applicable	Not approved yet. Filed on same date as this filing.

	<u>Component/Form Name</u> <u>/Description/Synopsis</u>	Form # or Rate Page Include edition date	Replacement Or withdrawn?	If replacement, give form # or rate page(s) it replaces	Previous State Filing Number, if required by state
01	Certified Loss Exclusion	CG XX XX 12 02	[X] Replacement [ ] Withdrawn [ ] Neither	List form number of previous terrorism exclusion	
02			[ ] Replacement [ ] Withdrawn [ ] Neither		

To be complete, a filing must include the following:

- A completed Expedited Filing Transmittal Document for each insurer or advisory organization.
- One copy of each endorsement, disclosure form or other policy language, unless the insurer has given an advisory organization authorization to file them on its behalf.
- A copy of the rates, rating systems and supporting documentation.
- The appropriate filing fees, if required
- A postage-paid, self-addressed envelope **large enough to accommodate the return.**

The insurer(s) submitting this filing certifies that it:

- ☐ Is compliance with the terms of the Terrorism Risk Insurance Act of 2002 and the laws of this state;
- ☐ Is compliance with the requirements of the bulletin containing the voluntary expedited filing procedures.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name:

\_\_\_\_\_  
Title: